

Defendant

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COMPLAINT AND DEMAND FOR JURY TRIAL

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a natural person residing Pittsburgh, Pennsylvania 15236.

4 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

5
6 7. Defendant is a corporation that has its office located in Norwalk,
7 Connecticut 06851.

8 8. Defendant is a “person” as that term is defined by 47 U.S.C.
9 §153(39).

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11 9. Defendant acted through its agents, employees, officers, members,
12 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
13 representatives, and insurers.

14 **FACTUAL ALLEGATIONS**

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16 10. Plaintiff has a cellular telephone number that she has had for more
17 than one year.

18 11. Plaintiff has only used this number as a cellular telephone number.

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20 12. The phone number has been assigned to a cellular telephone service
21 for which Plaintiff incurs a charge for incoming calls.

22 13. Plaintiff never provided permission to Defendant to call her cellular
23 telephone number or to contact her regarding any goods or services offered by
24 Defendant.
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1 14. Beginning in July 2014, and continuing through December 2014,
2 Defendant called Plaintiff on her cellular telephone.

3 15. When contacting Plaintiff on her cellular telephone, Defendant used
4 an automatic telephone dialing system and automatic and/or pre-recorded
5 messages.
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7 16. Defendant's messages would state its name and that its call was "for
8 marketing purposes."

9 17. Defendant's telephone calls were not made for "emergency purposes."
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11 18. For example, Defendant called Plaintiff on: July 31, 2014 (three
12 times); August 1, 2014; August 5, 2014 (two times); August 13, 2014; September
13 1, 2014(five times); September 2, 2014 (two times); September 5, 2014;
14 September 8, 2014; September 30, 2014; October 1, 2014; October 7, 2014;
15 October 29, 2014; November 20, 2014; and November 21, 2014 (two times).
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17 **DEFENDANT VIOLATED THE**
18 **TELEPHONE CONSUMER PROTECTION ACT**

19 19. Plaintiff incorporates the forgoing paragraphs as though the same were
20 set forth at length herein.

21 20. Defendant initiated multiple automated telephone calls to Plaintiff's
22 cellular telephone using a prerecorded voice.

23 21. Defendant initiated these automated calls to Plaintiff using an
24 automatic telephone dialing system.
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1 22. Defendant's calls to Plaintiff were not made for emergency purposes.

2 23. Defendant's calls to Plaintiff, in and after July 2014, were not made
3 with Plaintiff's prior express consent.

4 24. Defendant's acts as described above were done with malicious,
5 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
6 under the law and with the purpose of harassing Plaintiff.

7 25. The acts and/or omissions of Defendant were done unfairly,
8 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
9 lawful right, legal defense, legal justification or legal excuse.
10

11 26. As a result of the above violations of the TCPA, Plaintiff has suffered
12 the losses and damages as set forth above entitling Plaintiff to an award of
13 statutory, actual and trebles damages.
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16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, PATRICIA KUBIAK, respectfully prays for a
18 judgment as follows:
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20 a. All actual damages suffered pursuant to 47 U.S.C. §
21 227(b)(3)(A);

22 b. Statutory damages of \$500.00 per violative telephone call
23 pursuant to 47 U.S.C. § 227(b)(3)(B);
24
25

- 1 c. Treble damages of \$1,500.00 per violative telephone call
2 pursuant to 47 U.S.C. §227(b)(3);
3 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
4 e. Any other relief deemed appropriate by this Honorable Court.
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6 **DEMAND FOR JURY TRIAL**

7 PLEASE TAKE NOTICE that Plaintiff, PATRICIA KUBIAK, demands a
8 jury trial in this case.
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10 RESPECTFULLY SUBMITTED,

11 DATED: June 2, 2015

KIMMEL & SILVERMAN, P.C.

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